propriating money shall become a law, unless upon its passage the yeas and nays, in each house, are recorded." (1910 GA. CIV. CODE, § 6441.) An act appropriating money was passed, signed and deposited with the Secretary of State. Mandamus proceedings were instituted by the Governor to compel obedience by the Comptroller-General. For respondent, evidence was admitted to show that the yeas and nays had not been recorded. *Held*, that this admission was error. *Dorsey* v. *Wright*, 103 S. E. 591 (Ga.).

The decision amounts to holding that the court will not enforce the constitutional provision. In England, where Parliament is supreme, courts have never admitted evidence to impeach enrolled acts. *Rex* v. *Arundel*, Hob. 109. In spite of the fact that United States legislatures derive their powers from written constitutions, many of our state courts and the United States Supreme Court have held properly authenticated bills to be conclusive proof of their constitutional enactment. *Field* v. *Clark*, 143 U. S. 649; *Bloomfield* v. *County of Middlesex*, 74 N. J. L. 261, 65 Atl. 890. This view is supported by considerations of practical expediency. See 11 HARV. L. REV. 267. *Pangborn* v. *Young*, 32 N. J. L. 29. But on strict theory an act not constitutionally passed is not law, and should be given no effect by the courts. *Simpson* v. *Union Stock Yards Co.*, 110 Fed. 799. *West End* v. *Simmons*, 165 Ala. 359, 51 So. 638. And the objection that a properly certified bill should not be impeached by evidence so uncertain as a journal has no force where the entry on the journal is itself the fact to be proved. *Bank* v. *Commissioners of Oxford*, 119 N. C. 214, 25 S. E. 966. *Lafferty* v. *Huffman*, 99 Ky. 80, 35 S. W. 123, *contra*.

SURETYSHIP — SURETY'S RIGHT OF SUBROGATION — SUBROGATION AGAINST A BANKRUPT PRINCIPAL IN FAVOR OF A SURETY FOR PART OF A DEBT — EFFECT OF A STATUTE GIVING A SURETY "THE LIKE PRIORITY . . . AS IS SECURED TO THE UNITED STATES." — By statute the United States is given priority over all other creditors of an insolvent or bankrupt debtor. (REV. STAT., § 3466; 1918 COMP. STAT., § 6372.) It is further provided that where the principal in any bond given to the United States is insolvent, a surety on the bond, who pays the United States, is entitled to "the like priority . . . as is secured to the United States." (REV. STAT., § 3468; 1918 COMP. STAT., § 6374.) The principal on a bond given for the faithful performance of a contract with the United States defaulted and became bankrupt. The surety paid the United States the amount of the bond, which did not cover the whole of the government's loss. The government filed a claim for the residue of the damages caused by the default and this claim was accorded priority over all other claims. The surety now petitions for equal priority with the United States. *Held*, that the petition be granted. *United States* v. *National Surety Co.*, 262 Fed. 62.

Although in England the Crown was entitled to priority at common law over all other creditors of a bankrupt or insolvent debtor by virtue of its sovereign prerogative, the priority of the United States is founded exclusively upon statutes. *United States* v. *The State Bank of North Carolina*, 6 Pet. (U. S.) 29. Originally such statutes were liberally construed, but the later tendency of the courts has been to find implied limitations to this priority in other acts of Congress. *Cook County National Bank* v. *United States*, 107 U. S. 445. The majority of the court in the principal case took this attitude in construing REV. STAT., § 3468. Although in England at common law a surety for a bankrupt principal who is surety for part only of the debt and who has paid that part is entitled to be subrogated to the creditor's claim against the bankrupt's estate and to a ratable proportion of the securities held by the creditor to secure the whole debt, this doctrine has been severely criticized and is not generally followed in the United States. *Knafft* v. *Knoxville Banking Co.*, 133 Tenn. 655, 182 S. W. 232. See 2 WILLISTON, CONTRACTS,

§ 1273. And even the English courts have refused to allow the subrogation where the surety seeks to secure equal priority with the Crown. *Regina* v. *O'Callaghan*, 1 Ir. Eq. 439. The decision in the principal case, accordingly, necessarily involves a holding that Congress intended to give the surety a new right, and the case can be supported only on this basis. But the earlier cases indicate that REV. STAT., § 3468, is simply declaratory of the equitable doctrine of subrogation in favor of sureties. See *United States* v. *Ryder*, 110 U. S. 729, 739; also *United States* v. *Preston*, 27 Fed. Cas. No. 16,087, 4 Wash. C. C. 446. Hence the common-law rule should apply and the case seems incorrect.

TAXATION — WHERE PROPERTY MAY BE TAXED — DOMESTIC TAX ON SEAT IN FOREIGN STOCK EXCHANGE. — An Ohio stock-broker sought to enjoin the State auditor from listing his membership in the New York Stock Exchange for taxation in Ohio. *Held*, that the petition be dismissed. *Anderson* v. *Durr*, 126 N. E. 57 (Ohio).

A membership in such an exchange is taxable property. *Rogers* v. *Hennepin County*, 240 U. S. 184; *State* v. *McPhail*, 124 Minn. 398, 145 N. W. 108; *In re Glendinning*, 68 App. Div. 125, 74 N. Y. Supp. 190, aff'd, 171 N. Y. 684, 64 N. E. 1121. Intangible personal property is generally taxed at the domicile of the owner. *Scripps* v. *Board of Review*, 183 Ill. 278, 55 N. E. 700. See 1 COOLEY, TAXATION, 3 ed., 89. But certain intangible property, including an exchange membership, may acquire a "business *situs*" and be taxable in a state other than that of the owner's domicile. *Rogers* v. *Hennepin County*, *supra; In re Glendinning*, *supra*. Liability to taxation in both states has been uniformly held not a violation of the Federal Constitution. *Fidelity Trust Co.* v. *Louisville*, 245 U. S. 54; *Blackstone* v. *Miller*, 188 U. S. 189. See Joseph H. Beale, "Jurisdiction to Tax," 32 HARV. L. REV. 587, 588. The decision in the principal case, therefore, rests on strong legal precedents. The taxation of the same property in two states is, however, unjust and economically undesirable. See *Kidd* v. *Alabama*, 188 U. S. 730, 732; *Blackstone* v. *Miller*, *supra*, 205. The Supreme Court has held that taxation at the owner's domicile of tangible personal property which was permanently located in another state violated the Fourteenth Amendment. *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194. This doctrine is, however, expressly limited to tangible personalty. *Fidelity Trust Co.* v. *Louisville*, *supra*. See *Union Refrigerator Transit Co.* v. *Kentucky*, *supra*, 205, 206, 211. But the same principle should be extended logically to prevent taxation at the owner's domicile of intangible personal property which in a business sense has a *situs* in another state and is there subject to taxation.

WILLS — REVOCATION BY MARRIAGE. — The testator made a bequest to a certain woman, provided that their contemplated marriage should take place. They married as contemplated within a month. A statute provided that "a marriage shall be deemed a revocation of a previous will." (1917 ILL. REV. STAT., c. 39, § 10.) *Held*, that the will was not revoked. *Ford* v. *Greenawalt*, 126 N. E. 555 (Ill.).

By the common law, marriage without the birth of issue would not revoke a man's will. *Hulett* v. *Carey*, 66 Minn. 327, 69 N. W. 31. The contrary was held in some of the states where statutes had made the wife heir to the husband. *Tyler* v. *Tyler*, 19 Ill. 151. In the same case, Illinois adopted the rule that the revocation was only presumptive. But it was established in England before the Wills Act, and is held by the weight of authority in this country, that revocation caused by change of circumstance is absolute. *Marston* v. *Fox*, 8 Ad. & El. 14; see ROOD, WILLS, 1 ed., § 377. The decision that the statute in the principal case was merely declaratory is therefore untenable;